

REMARKS

The present Amendment is in response to the Official Action mailed January 31, 2011 ("the Action"). Claims 1, 4 and 9 have been amended, while claims 24-26 have been added. Claims 3, 5, 8, 11, 12, 14-17, 20, 22 and 23 have been previously canceled. Therefore, claims 1, 2, 4, 6, 7, 9, 10, 13, 18, 19, 21 and 24-26 remain pending in the present case. Because of the finality of the Action, the present Amendment is accompanied by a Request for Continued Examination. The following sets forth Applicants' remarks pertaining to those currently pending claims in the Action.

As an initial matter, Applicants respectfully thank the Examiner and her supervisor for taking the time on May 3, 2011 to conduct a telephonic interview with the undersigned counsel. During that interview, which is evidenced by the Examiner's Interview Summary dated May 6, 2011 ("the Summary"), each of the objections and rejections set forth in the Action were discussed. In fact, although the Examiner has indicated that further search consideration would be required, general agreements as to amendments to overcome such objections and rejections were reached.

Turning now to the Action, the Examiner first objected to the drawings under 37 C.F.R. 1.83(a). In particular, the Examiner indicated that the "at least one relative angle designation mark on the upper surface and at least one relative angle designation mark on the lower surface" was not shown in the drawings. As was discussed in the aforementioned interview, at least FIGS. 3a through 4d show such marks. In addition, and with respect to the Examiner's rejections of claims 1, 2, 4, 6, 7, 9, 10, 13, 18, 19 and 21 under 35 U.S.C. § 112, first paragraph, certain of the claims have been amended to more particularly claim the relative angle designation marks. For instance, each of independent claims

1, 4 and 9 have been amended to set forth the particular situation of the mark on the spacer (discussed further below). These amendments indeed comport with at least FIGS. 3a through 4d. In light of the amendments and the discussions with the Examiners, Applicants respectfully request that the drawing objections and § 112 rejections be withdrawn.

Further in the Action, the Examiner rejected previously presented claims 1, 2, 4, 6, 7, 9, 10, 13, 18, 19 and 21 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,425,920 to Hamada ("Hamada") in view of U.S. Patent No. 5,306,308 to Gross et al. ("Gross") Again, Applicants refer to the above amendments of independent claims 1, 4, and 9, and in particular, the amendments more specifically setting forth the relative angle designation marks and their orientation on the spacer body. For instance, independent claim 1 has been amended to require that the upper and lower surfaces of the spacer body be disclosed from each other a maximum distance along the first axis, and that the relative angle designation marks be situated along that axis. Moreover, the claim has been amended to require that the marks be separated by the central trunk and be visible when the spacer is attached to an insertion tool. At least the latter limitation was suggested by the Examiners, who acknowledged that such was functional language, but indicated would aid in having the claims overcome the rejections based upon Hamada and Gross. In light of these amendments, Applicants respectfully submit that independent claims 1, 4 and 9 (independent claims 4 and 9 include similar amendments to that of independent claim 1) overcome the 35 U.S.C. § 103 rejections set forth in the Action. During the interview, the Examiners agreed with these contentions.

In light of the foregoing, Applicants respectfully submit that each and every one of the currently pending claims is in condition of allowance. Although each of the dependent claims have not been discussed herein, Applicants respectfully submit that such claims are allowable based upon their dependence from one of independent claims 1, 4 or 9, or an intervening claim. In addition, Applicants point out that new claims 24 through 26 are newly added dependent claims depending from independent claims 1, 4 and 9, respectively. The limitations set forth in those new claims (that the relative angle designation marks be grooves) were in fact suggested by the Examiners during the aforementioned interview. Thus, those claims do no constitute new matter, and are indeed allowable, if only based upon their dependencies.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: May 31, 2011

Respectfully submitted,  
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